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June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY
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UNDER FRE 408**

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, Illinois 60604

Re: Butler County - Skinner Landfill, West Chester, Ohio - *De Minimis* Settlement

Dear Ms. Estes:

We are legal counsel to Butler County in connection with the above-referenced matter. As you may be aware, Butler County entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs' claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Butler County (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA) that is at least as protective of the Company's interests as are the terms of U.S. EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Butler County's understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Butler County qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

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Sherry Estes, Esq.
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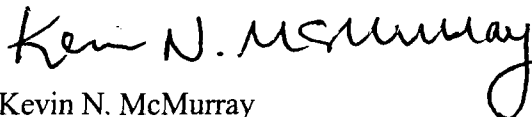
Accordingly, I am enclosing the information requested by U.S. EPA for Butler County. I believe that this information amply demonstrates that Butler County is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Butler County understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Butler County and the other *de minimis* settlers in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Butler County does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Butler County is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the County strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP

A handwritten signature in black ink, reading "Kevin N. McMurray". The signature is written in a cursive, flowing style.

Kevin N. McMurray
Counsel for Butler County

KNM:llb
Enclosures
cc: Mr. Tony Parrott (w/encls.)

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Butler County

SNH

Settlement Amount: **\$2,000.00**

Excerpt from Allocator's Preliminary Report :

The Skinner Landfill is located in Butler County. Butler County argues that it took no waste to the Skinner Landfill, however. During 1970 - 1984, Butler County owned and operated Woodsdale Landfill -- all waste generated by any Butler County facility (within the Garbage & Refuse Disposal District) went to Woodsdale. It further explained:

1. Butler County Home Care Facility ("BCHCF") used Rumpke for all waste including food waste, disposable diapers, MSW. The BCHCF also had small dumpster that was picked up 2 - 3 days/week. BCHCF used BFI and Rumpke during relevant time period but does not believe its waste was transported to Site.
2. Butler County Office of Engineer ("BCOE") self-hauled to Woodsdale Landfill until it closed in 1984. Thereafter, it self-hauled to "other job sites," Schlichter Landfill or Rumpke Landfill in Colerain. There was no indication of type of waste.
3. Butler County Department of Environmental Services ("BCDES") disposed of wastewater sludge and "screenings" [grit from head end of wastewater treatment plant] as follows:
 - A. Sludge: land application for crops;
 - B. Screenings: at Woodsdale Landfill through 1984, then at Beckett Ridge Receiving Station, on-site treatment plant, BFI Fairfield Landfill, BFI Big Foot Landfill or Rumpke Colerain Landfill. Screenings were transported by BCDES employees.

The County estimated its grit and trash from wastewater treatment plant [in 1990] as two 8 cy containers with pickup two times per week and four 2 cy containers with pickup once per week

4. Butler County Maintenance Office did not use any Exhibit A entities for transport or disposal.

BCHCF, on occasion, self-hauled building material waste to Woodsdale Landfill until it closed in 1984. The County did not collect or arrange for collection of waste from commercial or industrial establishments.

Butler County submitted 1982 bid documents for disposal of garbage, refuse and sludge and also 1984 - 1990 invoices from BFI to the County Water & Sewer Dept. for disposal at Bobmeyer and Bigfoot Run Landfills. While I note that some of the 1990 tickets were illegible and the invoices do not indicate the landfill disposal location, there is no indication of the usage of Skinner Landfill in these documents.

Butler County also submitted documents indicating it used sludge for land application on numerous farms in accordance with recommendations of the Agricultural Extension Service and alleged approval of OEPA.

Butler County was linked to the Site originally through two Skinner log entries, one in 1981 and one in 1968, and an interview report. A 1981 entry turned out to be related not to waste disposal but to payment for an easement.

A 1968 entry is less easily explained. The entry is for July 20, 1968 and reads "A.R. Tilton, City Auditor, Auditor's Office, Butler County, Hamilton, Ohio 45011 (Refund)." It is for \$50. It appears in a list of "dump" income customers. Even though designated a refund, the \$50 is *added* in with the other dollar entries to determine "dump income." The County has submitted an affidavit from an employee who began employment in 1976 but who says that to the best of her knowledge the County has always issued property tax refunds in July and that the name of the auditor would be on the refund check. Elsa Skinner did not remember the entry and did not remember Butler County using the landfill. While the matter is not entirely free from doubt, I have decided not to take this log entry into account in quantifying Butler County's waste-in amount.

The interview was with Margaret Hanna who resided in a home at the entrance to the Skinner property since 1956. Ms. Hanna observed what she was reported to have described as empty barrels with tar residue inside. She assumed that the barrels were from Butler County as a result of repaving (presumably referring to Cincinnati Dayton Road). She apparently said that John and Albert Skinner would load the barrels into trucks and dispose of them in the Landfill. I do not know if Ms. Hanna is still alive, but she was not deposed. While it would not be illogical to me for Butler County to take empty barrels associated with road repaving for a road at the Skinner property entrance to the Skinner Landfill, I have decided not to take this report into account for purpose of quantifying Butler County's waste-in amount.

Ray Skinner recalled that Butler County used the Landfill for road side cleanup, or as he put it, salt, tires, trees, brush, paper, glass, tin cans, and loads of blacktop. He placed Butler County's usage of the Landfill in the 1950s and 1960s. The County argued that in his testimony Ray Skinner was referring to another entity other than it, but having heard the testimony and having reviewed it (p. 932 - 937, 1267-1271) carefully, and while I concede it was not always easy to follow, I am comfortable that he unmistakably identified a "governmental" truck with the name Butler County on it as a user of the landfill over an eight to ten year time period:

Q. There's no doubt in your mind that you saw the Butler County trucks?

A. No doubt.

Q. At the landfill?

A. No doubt.

R. Skinner Depo., p. 1271.

Lloyd Gregory's testimony supports Ray Skinner's testimony. When asked if Butler County was a user of the Landfill, he said, "could have been." He then explained that he saw lots of county trucks dump waste at the landfill, but he could not be sure which county. Lloyd Gregory was referring to the time period of the mid-1960s. Lloyd Gregory Depo., p. 78-79.

Butler County's questionnaire response does not discuss the time period prior to 1970 except with respect to the "refund" entry in the Skinner log. It simply argues that Ray Skinner's testimony should not be used at all with respect to it and that Lloyd Gregory did not identify Butler County as a user of the Landfill.

Waste In Amount. I am comfortable that on this record the district court would conclude that Butler County did, in fact, take some waste to the Skinner Landfill. The question again is how much. Ray Skinner suggested that the County took road waste to the Landfill for an eight to ten year time period but had trouble determining a frequency of usage. He said it was less than once a month, however. I have decided to assume six trips per year. Based on Mr. Skinner's description of vehicles types, I am further going to assume that each load was 5 cys. I am going to take the low end of Ray Skinner's time range (eight years). Finally, as part of this analysis, I am going to accept Butler County's argument that the \$50 entry in the log was a property tax refund, although the matter is not free from doubt. Based on these figures, I am assigning Butler County a waste-in amount of 240 cys (6 trips per year x 5 cys per trip x 8 years).

Excerpt from Allocator's Final Report :

See the Avon Products, Inc. discussion.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem Dyne	Rest of Chem- Dyne	Total
BUTLER COUNTY	150	0	372906	0.0402%	262252	0.0000%	0.00%	0.00%			0.00402%